

### COMPLIANCE BOARD OPINION 93-3

February 24, 1993

*Mr. Michael V. Treherne*

The Open Meetings Compliance Board has considered your complaint dated December 11, 1992, concerning the closing of a portion of the meeting of the Bel Air Town Commissioners on December 2, 1992. Your complaint requested "a review of the closed meeting held by the Bel Air Town Commissioners on December 2, 1992":

I believe that the meeting was held with the owners of Bel Air Land Development regarding the potential buyer of their property by K-Mart. Such a use by K-Mart would require a resolution to amend the annexation agreement between the town and Bel Air Land Development. As a concerned citizen and the president of the adjacent homeowners association, I feel that discussions between municipal entities and developers should be open and [of] public record.

The Honorable Mark S. Decker, Chairman of the Board of Town Commissioners, filed a timely response to your complaint. Mr. Decker acknowledges that the Board of Town Commissioners held a closed meeting on December 2, 1992. Mr. Decker asserts that the meeting was closed under the authority of §10-508(a)(4) of the State Government Article, Maryland Code, which authorizes a public body to meet in closed session to "consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State."

The Board of Town Commissioners supplied the Compliance Board with the information about the December 2 closed session that was set out in the minutes of the next open session. Under §10-509(c)(2), this statement is to contain, among other things, "a listing of the topics of discussion ...." The Board of Town Commissioners noted that one of the persons present, a representative of Chase Properties, "detailed the proposed relocation of [the] existing [K-Mart] store at Tollgate Mall to the Bel Air Land Development site across from the MVA facility."

The General Assembly has imposed an overall requirement that meetings subject to the Act be open to the general public. §§10-505 and 10-507(a). Despite this general requirement of openness, the General Assembly has enumerated 14 circumstances under which a public body may meet in closed session. Many of these exceptions have been in the Open Meetings Act since it was first enacted; others were the product of the significant amendments to the Act in 1991.

The exception that was invoked by the Board of Town Commissioners, §10-508(a)(4), reflects a rare instance in which the 1991 amendments broadened the scope of an exception that had been in the original Act. Under its former wording, §10-508(a)(4) authorized a public body to meet in closed session to "consider a preliminary matter that concerns the proposal for a business or industrial organization to locate in the State." In 1991 the Legislature deleted the modifier "preliminary" and authorized the exception not only for proposals by a business or industrial organization "locate" in the State but also to "expand" or to "remain" in the State.

This rewording evidently reflects the Legislature's understanding that some businesses might be deterred from making proposals about relocation, expansion, or retention of an existing facility if all such discussions were open to public view. A business's proposal to move from one site to another within the State comes within the expanded terms of the exception in §10-508(a)(4), whether or not it would have under the original wording.

The materials provided by the Board of Town Commissioners indicate that the closed session on December 2 was limited to a discussion of the proposal by a retail business to relocate a new site. While the materials are not explicit on this point, presumably the new site reflects an expansion of the business, or at least a proposal to remain in the area. The materials supplied by the Board further reflect an understanding by the Board that the exception would not properly be invoked when the matter involved not a discussion of the proposal by the business but rather consideration of a possible amendment to an annexation resolution. The latter would be done in open session, according to the minutes of the Board of Town Commissioners.

In summary, the Compliance Board finds that the closed meeting held by the Board of Town Commissioners of Bel Air on December 2, 1992 did not violate the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
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